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ATTORNEY FOR APPELLEE:

**CHRISTINE A. MAJEWSKI**  
Elkhart, Indiana

In re J.S., L.S., and D.S. )  
 )  
LATAVIA SCOTT, )  
 )  
Appellant-Respondent, )  
 )  
vs. ) No. 20A05-0804-JV-190 )  
 )  
ELKHART COUNTY )  
DEPARTMENT OF CHILD SERVICES, )  
 )  
Appellee-Petitioner. )

**October 8, 2008**

**BAILEY, Judge**

## **Case Summary**

Latavia Scott (“Scott”) appeals the voluntary termination of her parental rights to J.S., L.S., and D.S. (the “Children”). We affirm.

## **Issue**

Scott raises two issues, which we consolidate and restate as whether the trial court clearly erred in terminating her parental rights.

## **Facts and Procedural History**

Scott is the biological mother of the Children, who were born respectively in 2004, 2005, and 2006. All of the Children were born with marijuana in their systems. Scott entered a safety plan and then violated it by smoking marijuana, refusing to take drug screens, and refusing to take medicine prescribed for her depression. She had a long history of marijuana use and untreated depression.

In 2007, the Elkhart County Department of Child Services (“DCS”) petitioned for the involuntary termination of Scott’s parental rights to the Children. A public defender was immediately appointed to her. On the day of an evidentiary hearing, Scott signed “Voluntary Relinquishment of Parental Rights” forms for the Children, one form per child. The form stated:

The said [“Latavia Scott” in handwriting] does hereby in writing expressly consent and agree to the termination of his/her parental rights concerning the above said child.

The undersigned expressly acknowledges that pursuant to IC 31-35-1-8, he/she has been advised of the following and that he/she understands each of the following provisions:

1. That my consent is permanent and cannot be revoked or set aside unless it was obtained by fraud or duress or unless I am incompetent;

2. That when the court terminates the parent-child relationship, all rights, powers, privileges, immunities, duties, and obligations (including any rights to custody, control, visitation, or support) pertaining to that relationship are permanently terminated, and my consent to the child's adoption is not required;

...

I fully understand that in the event that a Court of competent jurisdiction should terminate my parental rights to the above-said child, that the said child and I shall then lose all our legal rights, obligations, privileges and duties with respect to each other, including, but not necessarily limited to, the right of inheritance and the right to control or consent to adoption.

...

I swear or affirm that my signature to this document has been freely given without coercion, duress or the exercise of undue influence.

Appendix at 61-63.

At the hearing, the trial court noted that Scott had signed the Voluntary Relinquishment of Parental Rights forms. The trial court then questioned Scott. She testified that she was literate, understood the petition, understood what it meant, was not under the influence of alcohol or drugs, and was not suffering from any mental illness or disease. The following exchange occurred:

Court: Latavia, you're obviously very emotional. Are your emotions impacting your understanding of what's going on today?

Scott: I don't know.

Court: Do you understand what's going on today?

Scott: Yes. I'm about to lose my kids.

Transcript at 4. The trial court advised Scott that the termination would be permanent and that her consent to adoption would not be required. She responded that she understood. As the trial court continued advising Scott, it asked whether she was comfortable proceeding at that time. She responded affirmatively. The trial court confirmed that Scott understood her rights, and continued as follows:

Court: Do you understand that this is permanent?

Scott: Yes.

Court: Do you understand and appreciate the finality of this action?

Scott: Yes.

Id. at 7. When asked, Scott's attorney declined the opportunity to ask any questions.

The trial court terminated Scott's parental rights to the Children. The next day, Scott sent a letter to the trial court in which she stated that, during the hearing, she "wasn't emotionally ready to make any serious decisions at that time. I was not aware of what I really had done." App. at 64.

Scott now appeals the trial court's termination of her parental rights.

### **Discussion and Decision**

On appeal, Scott argues that she was not competent to give her consent to the termination of her parental rights. This Court will not set aside a trial court's order to terminate parental rights unless it is clearly erroneous. In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005).

A parent's consent to the termination of her parental rights is deemed valid if the parent executed a written consent and acknowledged her consent in open court. Youngblood

v. Jefferson County Div. of Family & Children, 838 N.E.2d 1164, 1169 (Ind. Ct. App. 2005), trans. denied. However, if there was any competent evidence of probative value that the parent was incompetent, the court must either dismiss the petition or continue the proceeding. Ind. Code § 31-35-1-7(c). Emotion, tension, and pressure are not sufficient to void consent, unless they rise to the level of overcoming one's volition. In re M.L.L., 810 N.E.2d 1088, 1093 (Ind. Ct. App. 2004).

Scott argues that she did not understand the consequences of the proceeding. Her actions and testimony suggested otherwise. Scott was literate. She signed three forms that stated clearly that she was agreeing to the termination of her parental rights, that she understood that her consent was permanent, and that she understood that her consent to adoption would no longer be required. During the hearing, she testified that she understood the nature and permanence of the proceeding. Furthermore, Scott's attorney declined to ask Scott any questions. Scott introduced no evidence to suggest that she was incompetent. The trial court did not clearly err in terminating Scott's parental rights to the Children.

Affirmed.

RILEY, J., and BRADFORD, J., concur.